

REMARKS

The Notice of Non-Compliant Amendment dated September 5, 2008 ("Notice") asserted that the Amendment filed February 28, 2008 ("Amendment") is non-compliant because "[e]ach claim has not been provided with the proper status identifier, and as such, the individual status of each claim can not be identified." The Notice does not identify which claims do not have a proper status identifier.

The Amendment, filed by previous counsel for the owner of the patent application, was filed in response to a Restriction Requirement dated October 31, 2007. The Restriction Requirement, as clarified in a subsequent Examiner Interview described in the Amendment, required election of either species A (directed to telescoping catheters in which the second and third sheaths are coupled to the distal end of the telescoping section) or species B (directed to telescoping catheters in which the second and third sheaths are coupled to the proximal end of the telescoping section).

In the Amendment, the Applicants elected species A. The Applicants further amended claims 12 and 26 so that those amended claims fall within the elected species. Unamended claim 1 also falls within species A. Accordingly, the Amendment correctly indicated that all of the claims (claims 1-27) fell within the scope of the elected species A. The present counsel has reviewed all of the status identifiers in the Amendment and they all appear correct.

The present counsel contacted the Examiner to determine the basis for the Notice as all of the status identifiers appear correct. The Examiner indicated that he expected that at least some of the claims should have been identified as "withdrawn" in view of the Restriction Requirement.

Claims are only indicated as "withdrawn" if they fall outside of the elected species or group. In this instance, all of the claims fall within elected species A and, therefore, none of the claims are labeled "withdrawn". To indicate any of the present claims as "withdrawn" would have been incorrect.

A Restriction Requirement is presented to limit the subject matter that must be searched by the Examiner. As a response to the Restriction Requirement in the present patent application, the Applicants chose to narrow the scope of the claimed subject matter by amending the claims so that they all fall within the elected species. There is no prohibition in either the Rules or the M.P.E.P. that prevents the Applicants from amending the claims to comply with the election required in a Restriction Requirement.


The Applicants respectfully request that if the Examiner believes that one or more of the claims do not fall within the elected species the Examiner should contact the Applicants' representative below or the Examiner should withdraw the claim(s) in the next Office Action with an explanation of the reasons why the claims do not fall within the elected species.

If the Examiner believes that the Rules or M.P.E.P. prohibit the claim amendment in the Amendment, the Applicants request that the Examiner contact the Applicants' representative with a citation to the relevant Rule or section of the M.P.E.P. The Applicants do not wish to delay prosecution of the present patent application and will comply with the established Rules. At this point, however, it is believed that the Amendment complies with all existing Rules and provides the proper status identifiers for each claim.

If the Examiner has any questions or concerns, the Applicant encourages the Examiner to contact the Applicants' representative, Bruce Black, by telephone to discuss the matter.

Dated: October 3, 2008

Respectfully submitted,

By 
Bruce E. Black, Ph.D.

Registration No.: 41,622
DARBY & DARBY P.C.
P.O. Box 770
Church Street Station
New York, New York 10008-0770
(206) 262-8908
(212) 527-7701 (Fax)
Attorneys/Agents For Applicant